

REMARKS

Claims 18 to 20, 22 to 24, 26 and 28 are canceled without prejudice, claims 35 to 41 are added, and therefore claims 11 to 13, 17, 21, 25, 27, 29, 30 and 32 to 41 are currently pending.

Reconsideration of the application is respectfully requested based on the following remarks.

With respect to paragraph 4 of the Office Action, the claims were objected to because claim 19 was misnumbered as claim 20. In response, Applicants have corrected the misnumbering. Therefore, it is respectfully requested that this objection to the claims be withdrawn.

With respect to paragraph 5 of the Office Action, claims 11 to 13, 17 to 30 and 32 to 34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2004/0153244 to Kellum (the “Kellum” reference), in view of U.S. Patent Application Publication No. 2004/0019420 to Rao et al. (the “Rao” reference).

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Independent claims 11 and 33 are to a device and method, respectively, that classifies objects into either a pedestrian object class or a vehicle object class based on their velocity and acceleration.

The “Kellum” and “Rao” references, either individually or in combination, do not disclose or even suggest the above-identified claim features. In particular, neither the “Kellum” nor the “Rao” reference even discusses the issue of classifying an object as a pedestrian (as opposed to a vehicle), as provided for in the context of the claimed subject matter. Instead, both of these references only discuss responding to objects which are vehicles. Thus, the “Kellum” and “Rao” references cannot possibly disclose, or even suggest, the feature of classifying objects into either a pedestrian object class or a vehicle object class based on their velocity and acceleration, as provided for in the context of the presently claimed subject matter.

Moreover, the Office Action has only cursorily addresses the claim feature of classifying objects into either a pedestrian object class or a vehicle object class based on their velocity and acceleration. In fact, the Office Action has not identified any section of either the “Kellum” and “Rao” references that even discusses the classification of an object as a pedestrian class, let alone doing so on the basis of both the acceleration and velocity of the object, as provided for in the context of the presently claimed subject matter.

The Office Action merely states, on page 4, without previously discussing the issue of pedestrian classification, as follows (emphasis added below):

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have implemented the length and width based classification system of Rao et al. (420), within the context of the object detection and driver warning system of Kellum, so as to determine or distinguish between pedestrian and vehicle type objects or targets in the path of the vehicle as part of a collision mitigation or elimination system, by warning the driver according to the relative size and acceleration of an object as part of an impact threat assessment.

Thus, the Office Action conclusorily concludes that determining a pedestrian object class, i.e., as opposed to a vehicle object class, using the acceleration and velocity of the object would be obvious based on the systems of the “Kellum” and “Rao” references.

However, it is respectfully submitted that this contention is not supported by the references because, as explained above, neither reference even discusses pedestrian objects.

Thus, the Office Action's contention that the above-discussed claim feature (of classification of objects into either a pedestrian object class or a vehicle object class based on their velocity and acceleration) is obvious is necessarily on an assumed level of knowledge or skill of one of ordinary skill in the art. However, the Office Action has not asserted what it considers to be the level of knowledge and skill of one of ordinary skill in the art, nor has it presented Applicant with any evidence or affidavit attesting to such under Rule 104. Furthermore, it is respectfully submitted pedestrian classification based on velocity and acceleration would be obvious to one of ordinary skill in the art in light of the systems of the "Kellum" and "Rao" references.

Therefore, the above-discussed features of claims 11 and 33 are not disclosed or even suggested by the "Kellum" and "Rao" references. Accordingly, claims 11 and 33, as well as their dependent claims, are allowable.

Regarding new claims 35 to 41, these claim does not add any new matter and are supported by the present application. Furthermore, claims 35 to 41 depend from independent claim 11, and are therefore allowable for at least the same reasons as explained above as to claim 11.

Accordingly, claims 11 to 13, 17, 21, 25, 27, 29, 30 and 32 to 41 are allowable.

CONCLUSION

Applicants respectfully submit that all pending claims of the present application are allowable. It is therefore respectfully requested that the objections and rejections be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Respectfully submitted,

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